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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,868	01/22/2004	Edward Eytchison	Sony-05300	8511

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EXAMINER
CLOUD, JOIYA M

ART UNIT	PAPER NUMBER
2444	

MAIL DATE	DELIVERY MODE
04/08/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/763,868	EYTCHISON ET AL.
	Examiner	Art Unit	
	Joiya M. Cloud	2444	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>22 March 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-27</u>.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure* Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444

Continuation of 11. does NOT place the application in condition for allowance because:
A)   Loomis does not teach pre-buffering a first portion of the song, subsequently streaming the entire song, and transitioning from streaming of the pre-buffered portion to streaming the entire song

As to the above agument A), Examiner respectfully disagrees. Applicant's states that Loomis does not teach prebuffering of a a first portion of a song, however no where does the claim recite pre-buffering a first portion of a song, rather the claim recites "prefetching an initial poriton of the content item". In response to Applicant's argument, Examiner submits in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, if Applicant intended to refer to the actual recitation in the claim (i.e. prefetching an initial portion of the content item), Examiner submits that Loomis clearly reads upon the limitation. See paragraph [0026], where Loomis specifically discloses a " pre-buffer cache engine" that pre-buffers the first ten seconds of a target song (Abstract) and a piledriver delivers the stream, the buffered first ten seconds of a target song and then seamlessly streams the rest of the song (see paragrap [0047]).

B)   Loomis does not teach a temporary storage cache for storing the pre-buffered portion of the song and a separate stream buffer for receiving the streaming entire song.

As to the above argument B), Examiner respectfully disagrees. First Examiner submits, nowhere does the claim mention a separate stream buffer. form para. Second, Loomis clearly teaches a a pre-buffer cache engine responsible for caching ten second portion of a target song (paragraph [0026]). Examiner suggests Applicant carefully read the prior art applied in the rejection.

C).   Loomis fails to teach a stream synchronizer that synchronizes the two data streams, and transitions an output resultant stream from the pre-buffered portion of the song to the entire song.

As to the above point C), Examiner respectfully disagrees. Examiner submits in response to Applicant's arugment, the claim does not call for "two data streams", but rather an initial portion of a content item and an entire segment of the content item (see claim 1 and 27 of the instant application). Nonetheless, Loomis clearly teaches two streams (i.e a pre-buffered first ten seconds of S_5 and the rest of S_5 that is streamed and synchronized by the piledriver to play the streams of data with "no interruption" and therefore the entire target song is played seamlessly. (See Abstract and paragraph [0047]. Examiner suggests Applicant amend the claim language to define how a resultant stream is produced and how such synchronization takes place to further distinquish the claims over the prior art rejection.